

REMARKS

Status of the Claims

Claims 1-3, 5-18, 34 and 35 are presently pending in this application and stand rejected.

Applicants thank Examiner Hoffman for extending the courtesy of a telephone interview to Applicants' undersigned attorney and Giordana M. Belenchia on June 12, 2008. During the interview, claims 1, 34, and 35 were discussed and agreement was reached that the amendments made herein to claims 1, 34, and 35 overcome all rejections.

Amendments to the Claims

Claims 1, 34, and 35 are amended to recite a tunnel notcher and guidewire delivery device having a *single* cutting element. Support for this amendment can be found throughout the specification and in the drawings, in particular in paragraph [0023] and in FIGS. 1 and 2A. Dependent claim 7 is amended in accordance with the Examiner's suggestion. Applicants add new dependent claim 36 to recite the tunnel notcher and guide wire delivery device of claim 2, wherein the distal portion has a length greater than a length of the cutting element. Support for this claim can be found throughout the specification and in the drawings. No new matter is added.

Claim Objections

The Examiner objects to the language used in claim 7. Applicants amend claim 7 to recite "the angle between *the distal facing surface* of the cutting element" as the Examiner suggests, thereby obviating the basis for the objection.

Claim Rejections Pursuant to 35 U.S.C. §102(b)

Claims 1-3, 5, 7-11, 14-15, and 34-35 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,409,730 of Green et al. ("Green").

Claims 1, 34, and 35 as amended recite a tunnel notcher and guidewire delivery device having an elongate member and a single cutting element. Green discloses at least two cutting elements in the form

of two helical blades and thus fails to meet the requirements of claims 1, 34, and 35. Accordingly, claims 1, 34, and 35 as well as claims 2, 3, 5, 7-11, 14, and 15 which depend therefrom, distinguish over Green and represent allowable subject matter.

Claim Rejections Pursuant to 35 U.S.C. §103(a)

Ruppert and Scholl

Claims 1-3, 5-15, and 34-35 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 571,400 of Ruppert in view of U.S. Patent No. 6,110,175 of Scholl. Applicants continue to believe that Ruppert is non-analogous art that is not properly combinable with Scholl for reasons previously submitted. However, it is not necessary to address this point further since the Examiner has agreed to withdraw this rejection.

As noted above, claims 1, 34, and 35 as amended recite a tunnel notcher and guidewire delivery device having an elongate member and a single cutting element. Ruppert teaches a mortising chisel having multiple cutting elements disposed thereon and thus fails to meet the requirements of claims 1, 34, and 35. In addition, it would not be obvious to modify the device of Rupert with the cutting element of Scholl as it would render the device of Rupert unsuitable for its intended purpose. In particular, a mortising chisel as disclosed by Rupert would fail to function as needed with only a single blade. Accordingly, claims 1, 34, and 35 as well as claims 2, 3, and 5-15 distinguish over Ruppert in view of Scholl and represent allowable subject matter.

Ruppert, Scholl, and Boucher

Claims 16-18 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Ruppert and Scholl in view of U.S. Patent No. 5,658,289 of Boucher et al. ("Boucher"). Applicants continue to believe that Ruppert is non-analogous art that is not properly combinable with either Scholl or Boucher for reasons previously submitted. However, it is not necessary to address this point further since the Examiner has agreed to withdraw this rejection.

The Examiner argues that Ruppert and Scholl disclose the claimed invention except for a locking mechanism. The Examiner therefore relies on Boucher to disclose the claimed locking mechanism. As

noted above, Ruppert and Scholl fail to meet the requirements of independent claim 1, and Boucher simply teaches a graft protection device that does not remedy the deficiencies of Ruppert and Scholl. Accordingly, claims 16-18 distinguish over Ruppert and Scholl in view of Boucher, at least because they depend from an allowable base claim.

Conclusion

Applicants submit that all claims are in condition for allowance for at least the reasons discussed above, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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